

STATUS: Effective

POLICY NUMBER: MP-008-NPD

SUBJECT: Applicability of RCRA Corrective Action Laws to Current Owners of Hazardous Waste Disposal Sites

AUTHORIZED: Carol S. Comer, Commissioner

SUPERSEDES: New

ISSUING OFFICE(S): Office of Land Quality; Office of Legal Counsel

ORIGINALLY EFFECTIVE: November 13, 2015

RENEWED/REVISED: Not applicable

Disclaimer: This Nonrule Policy Document (NPD) is being established by the Indiana Department of Environmental Management (IDEM) consistent with its authority under [IC 13-14-1-11.5](#). It is intended solely to provide guidance and shall be used in conjunction with applicable rules or laws. It does not replace applicable rules and laws, and if it conflicts with these rules or laws, the rules or laws shall control. Pursuant to [IC 13-14-1-11.5](#), this policy will be available for public inspection for at least 45 days prior to presentation to the appropriate State Environmental Board, and may be put into effect by IDEM 30 days afterward. If the nonrule policy is presented to more than one board, it will be effective 30 days after presentation to the last. IDEM also will submit the policy to the Indiana Register for publication.

1.0 PURPOSE

The purpose of this NPD is to state IDEM's interpretation of RCRA and [IC 13-22-13](#) et al. with regard to whether current or former owners or operators of former hazardous waste facilities are responsible for corrective actions.

2.0 SCOPE

This NPD applies to (a) subsequent owners of former hazardous waste facilities who did not participate in the operation of such facilities, did not seek or receive a permit, and were not required to do so and (b) former owners or operators of hazardous waste facilities who participated in the operation of such facilities, sought or received a permit, or were required to do so. This NPD is limited to issues arising under the RCRA corrective action standards, requirements, and enforcement authority under [IC 13-22-13](#) et al. and [329 IAC 3.1](#). This NPD does not limit other obligations of subsequent owners of former hazardous waste facilities, such as the obligations to provide site access, cooperate with responsible parties, and exercise due care to avoid causing or exacerbating releases. This NPD does not purport to affect or impact EPA's authority to interpret and implement federal statutes and regulations in any manner.

3.0 SUMMARY

IDEM has determined that its authority to order corrective actions under RCRA, [IC 13-22-13](#) et al., and related federal and state rules and regulations, does not extend to subsequent owners of hazardous waste facilities if the subsequent owner did not operate such a facility on the site, did not seek or receive a permit to do so, and was not required to seek or receive such a permit.

4.0 DEFINITIONS

4.1. "Agency" or "IDEM" means the Indiana Department of Environmental Management.

4.2. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq.

4.3. "Hazardous waste facility" has the meaning set forth in [IC 13-11-2-100](#).

4.4. "OLC" means IDEM's Office of Legal Counsel.

4.5. "OLQ" means IDEM's Office of Land Quality.

4.6. "Nonrule policy document" or "NPD" means a policy or statement described in [IC 13-14-1-11.5\(a\)](#).

4.7. "Owner" means the owner of the property and includes the owner's lessees, tenants, and other contractors.

4.8. "RCRA" means the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., as amended by the 1984 Solid and Hazardous Waste Amendments to RCRA, 42 U.S.C. § 6901 et seq.

5.0 ROLES

5.1. If OLQ determines that there has been a release of hazardous waste, or a constituent of hazardous waste, from a former hazardous waste facility, OLQ will proceed as follows.

5.1.1. OLQ will determine if the current owner of the former hazardous waste facility ever applied for a permit to operate the facility, received such a permit, or should have applied for or received such a permit. If so, the agency may apply RCRA, [IC 13-22-13](#) et al., and related federal and state rules and regulations to the current owner.

5.1.2. OLQ will determine whether, as a result of their relationship, affiliation, common ownership, or other circumstances, the current owner is responsible for the actions or inactions of an owner or operator who applied for a permit to operate the facility, received such a permit, or should have applied for or received such a permit. If so, the agency may apply RCRA, [IC 13-22-13](#) et al., and related federal and state rules and regulations to the current owner.

5.1.3. If neither sections 5.1.1 nor 5.1.2 apply to the current owner, then the agency will not apply RCRA, [IC 13-22-13](#) et al., or related federal and state rules and regulations to the current owner.

5.1.4. OLQ will determine if any former owner or operator of a former hazardous waste facility ever applied for a permit to operate the facility, received such a permit, or should have applied for or received such a permit. If so, the agency may apply RCRA, [IC 13-22-13](#) et al., and related federal and state rules and regulations to the former owner or operator.

5.2. Upon request, OLC will advise and assist OLQ with regard to any legal matters arising out of the application of this policy.

6.0 POLICY

6.1. RCRA, Indiana state statutes, and associated rules require that any person who applies for a permit to operate a hazardous waste facility, receives such a permit, or should have applied for and received such a permit is obligated to conduct corrective action for any releases of hazardous waste, including actions off-site that threaten human health or the environment. As to such individuals, that obligation continues to exist after the facility ceases operations.

However, the agency has determined that subsequent owners who never applied for a permit to operate a hazardous waste facility, never received such a permit, was never obligated to apply for such a permit, and never received such a permit, is not subject to RCRA and related state and federal statutes and regulations.

6.2. In order to facilitate remediation of hazardous waste sites, this policy clarifies IDEM's interpretation of applicable RCRA corrective action laws and rules, and the process for developers, municipalities, and other entities willing to remediate and redevelop contaminated sites.

6.3. IDEM will continue to exercise the authority delegated to it pursuant to RCRA, and provided by [IC 13-22-13](#) et al. and all related environmental laws and rules, with regard to former owners or operators of hazardous waste facilities who applied for interim status, received an operating permit, or conducted hazardous waste management activities required to have a permit without obtaining one. Further, IDEM will continue to exercise its authority under other applicable laws and rules, such as CERCLA and similar state laws, with regard to all contaminated properties.

6.4. Nothing in this NPD will be interpreted to render Indiana law pertaining to RCRA permits or RCRA obligations less stringent than federal RCRA laws and regulations.

7.0 REFERENCES

7.1. Federal Laws or Rules:

7.1.1. 42 U.S.C. § 6901 et seq.

- 7.1.2. 42 U.S.C. § 6924, SWDA § 3004 Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities
- 7.1.3. 42 U.S.C. 6925, SWDA 3005 Permits for Treatment, Storage or Disposal of Hazardous Waste
- 7.1.4. 42 U.S.C. 6926, SWDA 3006 Authorized State Hazardous Waste Programs
- 7.1.5. 42 U.S.C. § 9601 et seq.

7.2. Indiana Administrative Codes:

- 7.2.1. [329 IAC 3.1](#) et seq.

7.3. Indiana Statutes:

- 7.3.1. Ind. Code § 13-11-1. Definitions
- 7.3.2. Ind. Code § 13-22-2. Regulation Generally; Adoption of Specific Rules
- 7.3.3. Ind. Code § 13-22-3. Permits
- 7.3.4. Ind. Code § 13-22-13. Corrective Actions
- 7.3.5. Ind. Code § 13-25-4. Hazardous Substances Response Trust Fund

8.0 SIGNATURES


Carol S. Comer, Commissioner
Indiana Department of Environmental Management

10/1/2015
Date


Bruce Palin, Assistant Commissioner
Office of Land Quality

10/1/2015
Date


Donald M. Snemis, Assistant Commissioner
Office of Legal Counsel and Criminal Investigations

10-1-2015
Date

This policy is consistent with agency requirements.


Quality Improvement Program
Office of Planning and Assessment
Office of Compliance Support

10-2-2015
Date

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An [html](#) version of this document.